

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA

2004 JUL 26 PM 4:35

GARY D. MCFARLAND
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RONALD JAMES,

Plaintiff,

v.

KAWASAKI MOTORS CORP., USA,

Defendant.

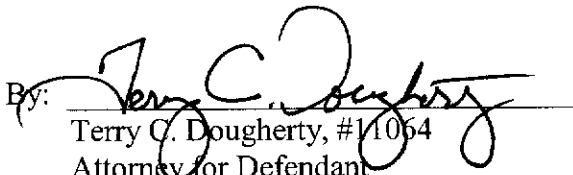
Case No. 4:04CV3254

**PROOF OF FILING NOTICE
IN STATE COURT**

The undersigned hereby certifies that on this 26th day of July, 2004, a true and correct copy of the attached Notice of Filing Notice of Removal, to which was attached a true and correct copy of the Notice of Removal filed herein, was presented by United States First Class Mail, postage prepaid and properly addressed for filing with the District Court of Kimball County, Nebraska, pursuant to 28 U.S.C. § 1446(d).

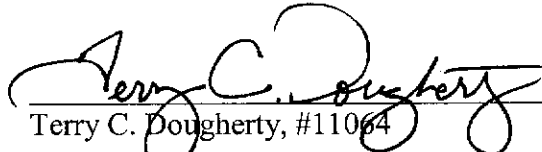
DATED this 26th day of July, 2004.

KAWASAKI MOTORS CORP., USA,
Defendant

By: 
Terry C. Dougherty, #11064
Attorney for Defendant
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508
Telephone: (402) 437-8500
Fax: (402) 437-8558
E-mail: tdougherty@woodsaitken.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of the foregoing by United States Mail, First Class, postage prepaid and properly addressed, on this 26th day of July, 2004, upon Plaintiff's attorney of record, David L. Wilson, Burke & Wilson, 116 West 2nd Street, Kimball, NE 69145.


Terry C. Dougherty, #11064

COPY

IN THE DISTRICT COURT OF KIMBALL COUNTY, NEBRASKA

RONALD JAMES,

Plaintiff,

v.

KAWASAKI MOTORS CORP., USA,

Defendant.

Case No. CI 04-56


**NOTICE OF FILING
NOTICE OF REMOVAL**

TO: THE CLERK OF THE DISTRICT COURT OF KIMBALL COUNTY, NEBRASKA

PLEASE TAKE NOTICE that on July 26, 2004, Defendant Kawasaki Motors Corporation, U.S.A. filed in the office of the Clerk of the United States District Court for the District of Nebraska, a Notice of Removal of the above action to the United States District Court. A copy of the Notice of Removal is attached hereto.

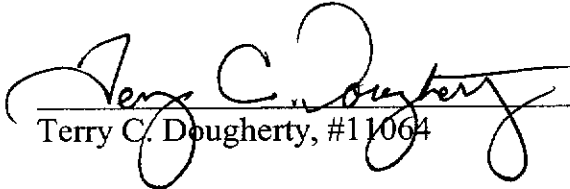
DATED this 26th day of July, 2004.

KAWASAKI MOTORS CORP., USA,
Defendant

By: 
Terry C. Dougherty, #11064
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508
(402) 437-8500
(402) 437-8558 – Facsimile

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Terry C. Dougherty, #11064

3. A copy of this Notice of Removal is being filed concurrently with the Clerk of the District Court of Kimball County, Nebraska, and is being served on counsel for the Plaintiff. *See* U.S.C. § 1446(a)(d). The District Court of Kimball County, Nebraska, is located within the jurisdiction of this Court.

4. At the present time, and at the time of the commencement of the State Court Action, James is and was a citizen of the State of Nebraska, and Defendant is and was a corporation organized and existing under the laws of a state other than Nebraska. (Complaint ¶ 1.)

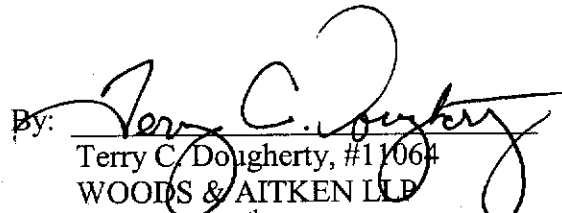
5. The State Court Action concerns an amount in controversy that potentially exceeds, exclusive of interest and costs, \$75,000 as specified by 28 U.S.C. § 1332. (Dougherty Decl. ¶ 3.)

6. Accordingly, removal of the State Action to the United States District Court is proper based upon the parties' complete diversity of citizenship.

WHEREFORE, the Defendant respectfully requests that this case be removed from the District Court of Kimball County, Nebraska, that this Court take jurisdiction of and enter such further orders as may be necessary and proper for the continuation of this action, and that the Defendant be afforded such further relief as this Court deems proper.

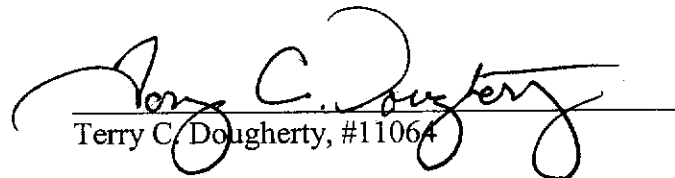
DATED this 26th day of July, 2004.

KAWASAKI MOTORS CORP., USA,
Defendant

By: 
Terry C. Dougherty, #11064
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, NE 68508
(402) 437-8500
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Terry C. Dougherty, #11064

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RONALD JAMES,

Plaintiff,

v.

KAWASAKI MOTORS CORP., USA,

Defendant.

Case No. _____

**DECLARATION OF
TERRY C. DOUGHERTY**

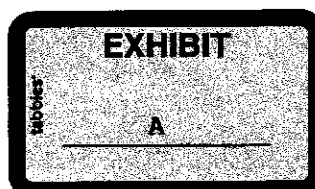
I, Terry C. Dougherty, under penalty of perjury, hereby state and declare as follows:

1. I am a resident of the State of Nebraska, am more than twenty-one years of age, and am giving this declaration freely and based upon my own personal knowledge and information.

2. I am an attorney licensed and admitted to practice law in the State of Nebraska and am admitted to practice before the United States District Court for the District of Nebraska. I am a partner with the law firm of Woods & Aitken LLP, which firm has been retained by Kawasaki Motors Corp., USA, ("Kawasaki"), Defendant, in connection with the litigation captioned *Ronald James v. Kawasaki Motors Corp., U.S.A.*, originally filed as Case No. CI 04-56, in the District Court of Kimball County, Nebraska, but which now has been removed to the United States District Court for the District of Nebraska.

3. I have been provided with a copy of a letter, dated May 17, 2004, from David L. Wilson, counsel for Plaintiff. A true and correct copy of that letter is marked as Exhibit "1," attached hereto and incorporated by this reference. The original of said letter was forwarded on

{00163478}



or about the date that it was written, to Wynn Woodard, who, on behalf of Kawasaki, investigated the accident that is the subject matter of this litigation. In that letter, Plaintiff's counsel made demand for damages, exclusive of interest and costs, of \$875,000.

Dated this 21st day of July, 2004.

A handwritten signature in cursive script, appearing to read "Terry C. Dwyer", written over a horizontal line.

Burke & Wilson

Attorneys at Law

David L. Wilson
George P. Burke (1929-2001)

116 West Second Street
Kimball, Nebraska 69145-1241
(308)235-3678
Fax: (308)235-3670
E-mail: dwilsonlaw@earthlink.net

May 17, 2004

Wynn Woodard
Woodard & Associates
9064 Claretta Drive
Las Vegas, NV 89129

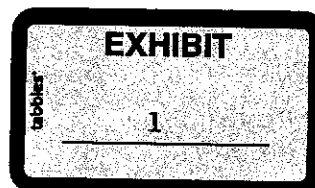
RE: Our Client: Ronald James
Your Client: Kawasaki Motors Corp., U.S.A.
Date of Loss: June 3, 2000
Your File No: 2001-732

Dear Mr. Woodard:

I have now been able to gather the information that I can that you had requested previously. With reference to the facts of the accident and the injuries, I would submit the following:

Mr. James owns this Kawasaki Bjou 220 CC 4-wheel, two wheel drive ATV. It was equipped to spray his fields as Mr. James is a farmer. On June 3, 2000, Mr. James was operating the ATV when the oil cap blew out of the engine and sprayed hot oil on his leg and down into his boot. Mr. James was operating the ATV during daylight, in a normal manner without any extraordinary demands being placed on the ATV. Mr. James went to the emergency room in Kimball, Nebraska, immediately following the incident and was treated. He was transferred to United Medical Center in Cheyenne, Wyoming, for further treatment which included several skin graphs.

Mr. James continues to have severe scarring for the injury incurred and will walk with a limp for the rest of his life. At the time of the injury, Mr. James was wearing a hard hat, 8-inch lace up leather work boots, heavy socks, denim jeans, a shirt.



Mr. James was unable to do his farm work and had to hire people to do his farm work after the injury at a cost in excess of \$6,000.

Mr. James purchased the unit at Kawasaki Korner in Scottsbluff, Nebraska, in 1998 or 1999. He has been unable to find the bill of sale.

A copy of the medical records I have been able to obtain is included with this letter.


Mr. James has suffered permanent disfigurement and injury as well as suffering a substantial amount of pain due to the defective ATV your company manufactured. Mr. James deserves to be compensated for his pain and suffering and permanent disfigurement and we would expect Kawasaki to compensate him for this. I am authorized at this time to advise you that Mr. James would accept \$875,000 as full settlement of his claims. I would further advise you that due to time constraints, this matter will need to be taken of immediately or within a very short period of time or we will have to file the suit. If suit is filed, we will still hope to settle the matter, but we will have to file the suit before we run out of time which would be in June of this year,.

If you have any other questions please contact me. If you request any additional information, please contact me.

I do have some photographs that Mr. James' previous attorney took of the injury, although those are the only photos that I have that were taken at the time of the injury and I am not able to send them to you. You could certainly look at them or have someone look at them or copy them.

I believe you had indicated previously that you some photographs taken by your investigator that we could have if we would reimburse you the cost of the reproduction which we would be willing to do, please advise me as to what that expense is.

Yours truly,

A handwritten signature in cursive script that reads "David L. Wilson /akh". The signature is written in dark ink and is positioned above the typed name.

David L. Wilson
FOR THE FIRM

DLW:akh

RECEIVED

JUN 29 2004

PL LEGAL

IN THE DISTRICT COURT OF KIMBALL COUNTY, NEBRASKA

RONALD JAMES,

Plaintiff,

vs.

KAWASAKI MOTORS CORP., USA,

Defendants.

CASE NO. *CI04-56*

COMPLAINT

FILED

JUN 01 2004

TIME *2:30 P* BY
CLERK
KIMBALL CO., NE

For his claims against the Defendant, Ronald James avers as follows:

1. Plaintiff is a resident of Kimball County, Nebraska. The Defendant is a corporation organized and existing under the laws of a state other than Nebraska.

2. The Defendant manufactures and sells an all-terrain vehicle known as the "Bjou 220 CC". This is a four-wheel, two-wheel drive all-terrain vehicle with the intended use of hauling a passenger and can be equipped for agricultural purposes such as being equipped with spraying equipment to be used to spray pesticides, weed killer and other liquids for agricultural purposes.

3. That approximately May, 1998, the Plaintiff purchased this Kawasaki Bjou 220 CC that was designed, manufactured and initially sold by the Defendant.

4. That on June 3, 2000, the Plaintiff was operating the ATV during daylight hours and in a normal manner without any extraordinary demands being placed on the ATV and for its intended uses. On that date, while operating the ATV, the oil cap blew out of the engine and hot oil sprayed on the Plaintiff's leg and down into his boot, causing the Plaintiff to suffer severe burns and great pain and suffering.

5. The Defendant negligently designed and manufactured the ATV and the oil cap used thereon and failed to adequately warn foreseeable users of the dangers inherent to the design and use of

EXHIBIT

B

the ATV and not readily apparent to foreseeable users of the product.

6. That the ATV suffered a design defect that rendered it unreasonably dangerous and unsafe for its intended uses. As a direct and proximate result of the Defendant's negligence as alleged herein, and/or as a result of the defective design, the Plaintiff suffered the severe burns, great pain and suffering as set out herein and in addition, occurred medical expenses in the amount of \$31,500.00, the costs of hiring other people to complete his farm work in the amount of \$6,000.00 as well as other general damages.

WHEREFORE, Plaintiff prays for judgement against the Defendant in the amount of \$37,500.00 plus general damages according to proof, costs of suit and such other relief as the Court may deem equitable.

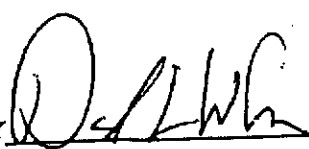
RONALD JAMES
Plaintiff,

FILED

JUN 01 2004

BY
DIST. COURT CLERK
KIMBALL CO., NE

BY


David L. Wilson
Burke & Wilson
116 W. 2nd Street
Kimball, NE 69145
(308) 235-3678
Attorney for Plaintiff

CERTIFIED MAIL
PROOF OF SERVICE BY AFFIDAVIT

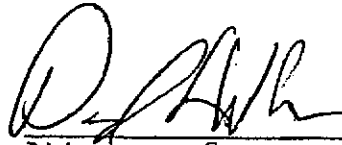
STATE OF NEBRASKA)
) ss.
COUNTY OF KIMBALL)

A copy of this Summons and Petition with reference to Case No. CI 04 56, Ronald James v. Kawasaki Motors Inc. USA, was mailed by certified mail, return receipt requested, showing to whom and where delivered and the date of delivery, to:

Kawasaki Motors Inc. USA, PO Box 25252, Santa Ana CA 92799-5252
on the 24th day of June, 2004.

The certified mail was returned to affiant on July 1, 2004, as "Received" all done pursuant to the Nebraska Revised Statutes (Cumulative Supplement 1983).

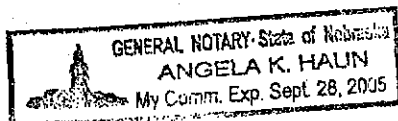
FURTHER AFFIANT SAYETH NOT.



Attorney for:

Ronald James, Plaintiff

Subscribed and sworn to before me on this 12th day of July, 2004.


Notary Public

Postage: \$4.42

[c:\wp51\civil\affcm.prfl]

FILED

JUL 15 2004

TIME 10:10 ¹⁸ BY
DIST. COURT CLERK
KIMBALL CO., NE

7003 2260 0001 1107 6079

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.37	0408 04 Postmark Here
Certified Fee	\$2.30	
Return Receipt Fee (Endorsement Required)	\$1.75	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 4.42	06/24/2004

Sent To Kawasaki motors Corp USA
 Street, Apt. No.,
 or PO Box No. PO Box 25252 92799
 City, State, ZIP+4 Santa Ana CA 92799-5252

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to: <u>Kawasaki motors Corp USA</u> <u>PO Box 25252</u> <u>Santa Ana CA 92799-5252</u></p>	<p>A. Signature <u>[Signature]</u> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>[Signature]</u> C. Date of Delivery <u>06/28</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>
<p>2. Article Number (Transfer from service label)</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>PS Form 3811, August 2001</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

7003 2260 0001 1107 6079

Domestic Return Receipt 102505-02-M-1540